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Cc: Durno, Mark[durno.mark@epa.gov]
From: Scott Smith
Sent: Fri 5/12/2017 6:45:59 PM
Subject: Defamation Overview - Potential Liability for Those that Forward/Republish the Publication

Scott,

Per our conversation the other day about public relations people (whether Anna Heaton or outside), if Anna or anyone else is forwarding what is found to be defamatory publications, it then opens up the potential liability to the people forwarding the defamatory publication even if they are not the originator.

For example, if a publication is deemed defamatory and anyone (including public relations people) are forwarding the defamatory publication to media outlets and others they could potentially face liability.

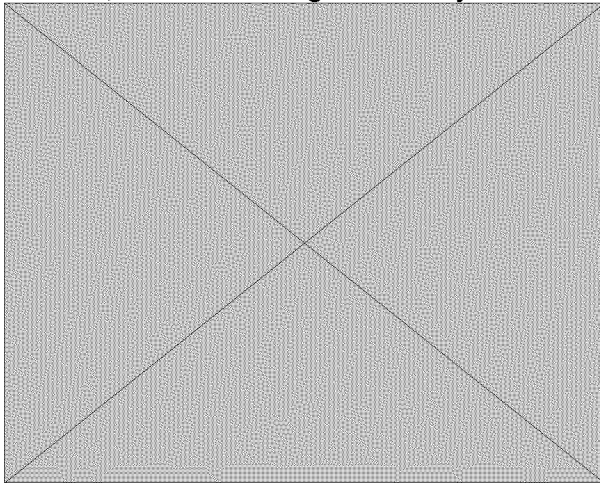
More below:

This is the key clause from below that appears to apply to anyone (including but not limited to public relations people forwarding defamatory publications to media outlets and others): **On the other hand, one who republishes a defamatory statement is himself liable for the defamation, even if he attributes the information to the original publisher.**

Full Summary below:

A statement is labeled defamation—libel or slander—only if it is published.

Therefore, in determining whether you have a claim



or whether you are liable relative to a potentially defamatory statement, **it is important to understand not only what constitutes a publication, but what rules apply relative to republication and multiple publications.**

Publication is:

Libel – Defamatory material that is intentionally or negligently provided to a third person by printed word.

Slander – Defamatory material that is intentionally or negligently provided to a third person by spoken word.

Most important in both of these definitions is that a third person—someone other than the defamer and the defamed—is involved. There is no defamation, and no liability, if the material is not communicated to a third person.

Publication occurs anytime information is conveyed to and understood by a third party. A party is considered to have published content if he tells another person or organization to communicate the information to a third party. Even if the material is in another language, as long as a third party understands the message and its defamatory nature, publication has occurred. **The defamer is considered the publisher** even if the victim has actually communicated the damaging information to a third party, but only if the victim was not aware of the damaging information contained in the message. *Lyon v. Lash*, 74 Kan. 745, 88 P. 262 (1906).

Multiple Publications/Republished Material

Each communication of a defamatory statement is considered an individual publication and, therefore, a separate cause of action for which the publisher can be held liable. This applies to a second communication of the same material to the same person.

Also falling under this rule are different editions of the same newspaper or magazine that run the same material, additional radio broadcasts of the same report or a second airing of a movie or news show. **Any of these are considered a separate publication because they are intended to reach a new audience.**

An exception is the “single publication rule.” If a communication is heard by multiple people at the same time, it is a single cause of action. Likewise, a single edition of a newspaper or magazine, a single radio or television broadcast and any other presentation to an audience are all considered a single publication and a single cause of action. *Regan v. Sullivan*, 557 F.2d 300 (2 Cir. 1977); *Hartmann v. Time, Inc.*, 166 F.2d 127 (3d Cir. 1947).

On the other hand, one who republishes a defamatory statement is himself liable for the defamation, even if he attributes the information to the original publisher. *Times Pub. Co. v. Carlisle*, 94 F. 762 (8th Cir. 1899). This is true whether the publication is libel (printed) or slander (spoken). *Wheeler v. Shields*, 3 Ill. (2 scam.) 348 (1840).

The only exception is if a publisher is protected by privilege, such as a statement in a

court of law. It is important to note that if an original publisher of a damaging statement is protected by privilege, this does not protect a republisher, who may still be liable for the second publishing. Also, a slanderous statement that may not have been considered actionable per se could be actionable if a republisher publishes the statement in written form.

Liability as the Publisher

The person who knowingly publishes a defamatory statement is liable to the person who has been defamed. Negligence or intent to publish will be considered relative to liability, however.

If the defamer behaves in such a way that reasonable people believe he should have recognized there was a great likelihood of the damaging material being conveyed to a third party, the defamer will be held liable. However, if a reasonable person would believe the communication was accidental and the behavior of the defamer did not exhibit a great likelihood of the information being published, there is no liability. *Roberts v. English Mfg. Co.*, 155 Ala. 414, 46 So. 752 (1908).

If the defamer instructs another party to publish material that is defamatory, such as a publishing house, printer or broadcaster, that party may also be liable for the defamation if the printer or publishing house is typically aware of the content of what it publishes or could find out whether the material is defamatory. If that party is merely a transmitter—that is, he delivers the material by way of selling a publication, renting it or in some way passing it on to a third person—he would not be liable for the defamation unless he had some reason to know of the defamatory nature of the material. *Cardozo v. True*, 342 So.2d 633 (Fla.App. 1977).

A person responsible for or who has control over a medium that is displaying or exhibiting defamatory material may become liable for failure to remove the defamatory material if it is within his or her power to do so. Such a person is not obligated to take unreasonable or burdensome measures to remove defamatory material, but if the offending content can easily be removed, he or she may be held liable if it is not removed. *Hellar v. Bianco*, 111 Cal.App2d 424, 244 P.2d 757 (1952).

Best Regards,

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